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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

ERNESTO GUTIERREZ-  
MEDINA,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent.

NO. 39672

PAYETTE COUNTY NO. CV 2011-319

APPELLANT'S BRIEF

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**BRIEF OF APPELLANT**

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APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF PAYETTE

---

HONORABLE SUSAN E. WIEBE  
District Judge

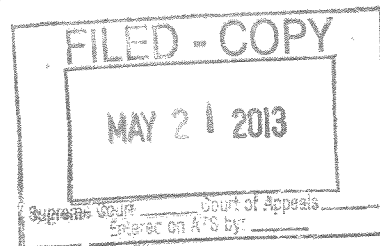
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## STATEMENT OF THE CASE

### Nature of the Case

Mr. Ernesto Gutierrez-Medina timely appeals from the Judgment and Order. Mr. Medina contends that he timely filed a post-conviction petition asserting that the newly announced rule from *Padilla v. Kentucky*<sup>1</sup> applies to his unique situation. Therefore, the order summarily dismissing his post-conviction petition should be reversed and the matter remanded for further proceedings.

### Statement of the Facts and Course of Proceedings

Mr. Medina, a citizen of Mexico, lawfully entered the United States as a worker in 1986. (R., p.5.) The next year he married, which has resulted in four children, two of whom are legal permanent residents of the United States and two of whom are United States citizens. (R., pp.4-5.) In December 1990, Mr. Medina became a legal permanent resident and received a green card that expired in 2001. (R., p.5.)

In 1995, Mr. Medina was arrested for delivery of a controlled substance. (R., p.5.) Although the charges were initially dismissed, the State refiled the same charges in a different case, a year later. (R., p.5.) Mr. Medina's trial counsel informed him that if he accepted the plea agreement, the conviction would not affect his immigration status. (R., p.6.) Accepting his trial counsel's advice, Mr. Medina entered an *Alford* plea taking advantage of the plea bargain that offered him probation. (R., p.7.) In 1997, the district court imposed upon him a unified sentence of five years, with two and one-half years fixed, suspended. (R., pp.3-4.) Mr. Medina pursued neither an appeal nor a post-conviction action within the regularly designated timelines. (R., pp.3-4.)

In July 1997, just a few months after his conviction, Mr. Medina's INS problems began. (R., pp.3-4.) He was served a notice by INS that alleged he was subject to removal from the United States due to his conviction in the delivery case. (R., p.7.) In September 1997, the district court released him from supervised probation. (R., p.41.) In November 1997, Mr. Medina was deported to Mexico. (R., p.7.) Not fully understanding the immigration case, Mr. Medina used his green card to reenter the United States. (R., pp.7-8.) In 2010, ICE arrested Mr. Medina for being in the United States unlawfully. (R., p.8.) At the time of the district court proceedings, Mr. Medina was awaiting removal from the United States. (R., p.9.)

On March 23, 2011, Mr. Medina filed his verified petition for post-conviction relief. (R., pp.3-24.) Mr. Medina asserted in his post-conviction petition that, had he received proper advice from his counsel, he would not have pleaded guilty. (R., p.9.) Mr. Medina contends that he received ineffective assistance of counsel under both the federal and state constitution. (R., p.10.)

The State filed a Motion For Summary Disposition and Memorandum In support Thereof seeking to have Mr. Medina's petition dismissed on procedural grounds. (R., pp.40-43.) The State alleged that Mr. Medina's petition was untimely. (R., pp.40-43.)

In response, Mr. Medina requested that the court equitably toll the statute of limitations to protect his due process rights. (R., pp.70-80.) Moreover, he asserted that *Padilla* announced a new rule and, therefore, should be retroactively applied because this is his first opportunity to have his claim heard. (R., pp.70-80.) Mr. Medina also asserted that, due to his circumstances, this was his first opportunity to bring the action

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<sup>1</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010).



in state court. (R., pp.70-80.) Pursuant to a request for additional briefing, Mr. Medina also explained that if *Padilla* announced a new rule, it was a watershed rule, subject to retroactivity. (R., pp.99-117.)

The district court granted the State's motion and dismissed Mr. Medina's Petition for Post-Conviction Relief. (R., pp.142-144.) The court found that *Padilla* did announce a new rule. (Tr., p.12, L.9.) However, the court the rule announced was not a watershed rule of criminal procedure. (Tr., p.12, Ls.10-12.) The court determined that there was no basis for equitable tolling. (Tr., p.12, L.23-p.13, L.4.) Mr. Medina timely appealed. (R., pp.163-166.)

Mr. Medina filed a motion for reconsideration. (R., p.145.) The district court denied the motion. (See Motion to Augment filed contemporaneously with this brief.)

### ISSUE

Did the district court err by summarily dismissing Mr. Medina's post-conviction petition because the *Padilla* court articulated a new watershed rule that under Idaho's unique jurisprudence should be retroactively applied?

## ARGUMENT

### The District Court Erred By Summarily Dismissing Mr. Medina's Post-Conviction Petition Because The *Padilla* Court Articulated A New Watershed Rule That Under Idaho's Unique Jurisprudence Should Be Retroactively Applied

#### A. Introduction

Under Idaho's unique jurisprudence with regard to collateral challenges in post-conviction, and particularly in light of Idaho's more expansive right to the competent representation of counsel, Mr. Medina submits that the decision in *Padilla* constituted a watershed rule and, therefore, the rule should be given retroactive application by this Court. Mr. Medina presented a material issue of fact that he received ineffective assistance of counsel because his attorney incorrectly advised him on immigration consequences rendering his guilty plea unknowing, unintelligent, and involuntary. The matter should be remanded for further proceedings applying the rule announced in *Padilla*.

#### B. Under Idaho's Modified Approach To The *Teague* Analysis, Idaho Courts Must Always Determine Whether The Unique Jurisprudence Of Idaho Requires A Different Result To The Retroactivity Analysis Than The United States Supreme Court

Generally, new constitutional rules will not be applied retroactively to cases already final on direct review. *Teague v. Lane*, 489 U.S. 288, 311 (1989). The United States Supreme Court has identified two exceptions to the general rule. See *Whorton v. Bockting*, 549 U.S. 406, 416 (2007). In collateral proceedings, substantive rules and watershed rules are applied retroactively. *Shriro v. Summerlin*, 542 U.S. 348, 351 (2004).

The United States Supreme Court recently held that *Padilla v. Kentucky*, requiring defense counsel to advise defendant about the risk of deportation arising from

a guilty plea, did not apply retroactively under its analysis of *Teague v. Lane*, 489 U.S. 28 (1989). *Chaidez v. United States*, \_\_\_ U.S. \_\_\_, \_\_\_, 133 S.Ct. 1103, 1105 (2013). The Court held that *Padilla* declared a new rule and noted that Chaidez did not argue that the two recognized *Teague* exceptions to the preclusion of retroactivity applied to his case. *Id.* 133 S.Ct. at 1107, n.3. Chaidez made no argument that *Padilla* was a watershed rule of criminal procedure. *Id.*

The Idaho Supreme Court adopted a modified form of the *Teague* analysis. See *Rhoades v. State*, 149 Idaho 130, 135-139 (2010). The *Rhoades* Court accepted the invitation of the U.S. Supreme Court in *Danforth v. Minnesota* to define each of the terms in the *Teague* analysis under state law. In *Danforth*, the U.S. Supreme Court addressed whether state courts could modify the retroactivity analysis it had previously set forth in *Teague* in deciding whether to apply new case law to a collateral challenge where the defendant's underlying conviction was already final. *Danforth v. Minnesota*, 552 U.S. 264, 267-269 (2008). The *Danforth* Opinion concluded that states were free to do so. *Id.* at 275-282.

Upon remand, the Minnesota Supreme Court in *Danforth* elected not to abandon the general standards of review under *Teague* in its entirety. *Danforth v. State*, 761 N.W.2d 493, 495-500 (Minn. 2009). However, the Minnesota Supreme Court recognized that a lock-step application of the federal standards regarding the *Teague* analysis might not be advisable in its state court determinations on collateral review. Therefore, the *Danforth* Court also held that Minnesota courts must independently review cases to determine whether fundamental fairness requires retroactive application of new constitutional rules of criminal procedure. *Id.* at 500.

Following the lead of the *Danforth* Opinion, and the Minnesota Supreme Court's subsequent determination on remand to independently define the terms of the *Teague* analysis under state law, the *Rhoades* Court held that it is mandatory for a reviewing court in Idaho to "independently review requests for newly announced principles of law under the *Teague* standard":

We now explicitly adopt the *Teague* standard in criminal cases on collateral review. Furthermore, we follow the lead of the Minnesota Supreme Court and hold that **Idaho courts must independently review requests for retroactive application of newly-announced principles of law under the *Teague* standard.**

*Rhoades*, 149 Idaho at 136 (emphasis added).

The Court in *Rhoades* explained why such independent review was necessary with regard to state post-conviction claims. First, the Court noted that, among the criticisms to the *Teague* approach was that the U.S. Supreme Court imposed a definition of a new rule that was overly broad, and therefore excluded most of the decisions issued with regard to constitutional questions. *Rhoades*, 149 Idaho at 138. Second, the *Rhoades* Court noted the common criticism in how narrowly the U.S. Supreme Court had defined the two exceptions providing retroactive application for new rules that were either "substantive rules" or "watershed rules." *Id.* Finally, and critically, the *Rhoades* Court acknowledged that the primary motivator for the strictness of the *Teague* standards under federal law was the concern against excessive interference on the part of the federal courts in state law determinations. The *Rhoades* Court expressly acknowledged that, in Idaho, "this Court does not have a similar concern for comity when interpreting whether a decision pronounces a new rule of law for purposes of applying *Teague*." *Id.* at 139.

Given this, the Idaho Supreme Court expressed throughout *Rhoades* that it was, “committed to independently analyzing requests for retroactive application of newly-announced principles of law with regard to the uniqueness of our state, our constitution, and our long-standing jurisprudence.” *Rhoades*, 149 Idaho at 140.

C. Under Idaho’s Unique Jurisprudence, And In Light Of The Salient Differences Between Collateral Review Under The UPCPA And Federal Habeas, The *Padilla* Opinion Announced A Watershed Rule Entitled To Retroactive Application Given Idaho’s More Expansive Right To Counsel

In the instant case, Mr. Medina contends that the new rule announced in *Padilla* is a watershed rule and thus *Teague* and *Chaidez* does not prohibit retroactive application. Moreover, while the *Chaidez* Opinion controls the federal claim, as explained above, Mr. Medina asserts that the *Padilla* retroactivity question must be analyzed under Idaho’s unique jurisprudence established by *Rhoades v. State*, 149 Idaho 130, 135-139 (2010).

In collateral proceedings, new rules that are either substantive rules or watershed rules should be retroactively applied. *Shriro v. Summerlin*, 542 U.S. 348, 351 (2004). A substantive rule is one that “alters the range of conduct or the class of persons that the law punishes.” *Id.* at 353. Procedural rules are those that regulate the manner of determining the defendant’s culpability. *Id.* The rule involved in this case is a procedural watershed rule and, therefore, should be applied retroactively.

Watershed rules implicate the fundamental fairness and accuracy of criminal proceedings. *Saffle v. Parks*, 494 U.S. 484, 495 (1990). The denial of the right to counsel at trial has generally been cited as an example of a watershed type of rule implicating the necessity of retroactivity. *Id.* Since *Teague*, the United States Supreme Court has yet to hold that a new rule satisfies the requirements for watershed status.

*Whorton*, 549 U.S. at 418, 127 S. Ct. at 1182. However, prior to *Teague*, the United States Supreme Court required retroactivity for a number of *Gideon*<sup>2</sup>-type violations. See *Arsenault v. Massachusetts*, 393 U.S. 5, 6 (1968) (retroactively applying *White v. Maryland*, 373 U.S. 59 (1963) which held that a defendant has the right to counsel at plea hearings); *McConnell v. Rhay*, 393 U.S. 2, 3-4 (1968) (retroactively applying *Mempa v. Rhay*, 389 U.S. 128 (1967) holding a defendant has the right to counsel at probation revocation hearings); *McConnell*, 393 U.S. at 3 (holding that the right to counsel on appeal recognized in *Douglas v. California*, 372 U.S. 353 (1963) should be applied retroactively).

1. Idaho's Unique Jurisprudence Requires A Lesser Standard For Watershed Rules With Regard To Claims Of Ineffective Assistance Of Counsel, As These Claims Generally May Not Be Brought On Direct Appeal

Mr. Medina asserts that, because under Idaho's unique jurisprudence with regard to claims of ineffective assistance of counsel, this Court should apply a lesser standard for what constitutes a watershed rule than is applied under federal habeas corpus review pursuant to *Teague*. This is because such claims generally can only be brought under Idaho law through a collateral attack under the Uniform Post-Conviction Procedure Act (UPCPA), rather than being brought on direct appeal and, therefore, the concerns of comity and finality that motivate the federal standard for watershed rules do not apply.

The Idaho Supreme Court in *Rhoades* noted that only two exceptions apply to permit retroactive application of new rules of law under *Teague* – substantive rules of law, which encompass only those rules that place private, individual conduct beyond criminal proscription; and watershed rules of fundamental fairness. *Rhoades*, 149 Idaho

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<sup>2</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

at 138-139. But the *Rhoades* Court further noted that the federal courts have interpreted the exception for watershed rules so narrowly that the “U.S. Supreme Court has found no watershed rules in the 19 years since it adopted *Teague*.” *Id.*

The narrow manner in which the *Teague* Court interprets both exceptions is the direct result of concerns specific to the context of federal habeas corpus, and concomitant concerns that the federal courts should not unnecessarily interfere with the finality of state court decisions. *Teague*, 489 U.S. at 308-310. This is because federal habeas corpus, “‘is not intended as a substitute for appeal, nor as a device for reviewing the merits of criminal trials,’ but only ‘to guard against extreme malfunctions in the state criminal justice systems.’” *Wright v. West*, 505 U.S. 277, 292 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979) (STEVENS, J., concurring)). In fact, the exhaustion of the claim in state court is a precondition of raising any claim in federal habeas. See, e.g., *Pitchess v. Davis*, 421 U.S. 482, 486 (1975). This requirement presupposes that, in nearly all cases, the defendant in federal habeas proceedings will have already obtained a ruling regarding all issues raised in habeas through the state appellate courts from which his or her state criminal conviction arose. *Id.* at 486-490.

The U.S. Supreme Court in *Danforth* recognized that the unique nature of federal habeas corpus review may lead some states to apply a lesser standard of review for retroactivity in light of their own state post-conviction procedures. In fact, the Court noted that it was the unique nature of federal habeas corpus review that prompted the standards underpinning the *Teague* analysis. “A close reading of the *Teague* opinion makes clear that the rule it established was tailored to the unique context of federal habeas and therefore had no bearing on whether States could provide broader relief in their own post-conviction proceedings than required by that opinion.” *Danforth*, 552



U.S. at 277. In fact, because the *Teague* retroactivity analysis was so squarely the product of the particular concerns of the federal court in not disturbing the finality of state law convictions, the *Danforth* Court further noted that these same principles of comity might actually provide a strong basis for state courts to provide much broader application of precedent in their own state post-conviction actions. *Id.* at 279-280.

Idaho's unique jurisprudence regarding collateral challenges to criminal convictions under the UPCPA does not share in the salient features of collateral challenges under federal habeas that have motivated the federal courts to apply such rigid and incredibly narrow standards for a watershed rule for purposes of retroactivity. This is particularly the case with claims of ineffective assistance of counsel, which normally cannot be brought on direct review and must instead be brought through post-conviction under Idaho's unique jurisprudence and statutory law.

In Idaho, a defendant may raise the issue of ineffective assistance of counsel either on direct appeal or in a petition for post-conviction relief, but not both. *Matthews v. State*, 122 Idaho 801, 806 (1992). While the defendant may, in theory, raise a claim of ineffective assistance of counsel on direct appeal, the practical reality is that resolution of such claims almost always turns on facts outside the record on appeal and, therefore, expansion of the record through post-conviction is usually required in order to properly adjudicate such claims. See, e.g., *State v. Elison*, 135 Idaho 546, 551-552 (2001); *Carter v. State*, 108 Idaho 788, 791 (1985); *Sparks v. State*, 140 Idaho 292, 296 (Ct. App. 2004); *State v. Santana*, 135 Idaho 58, 66-67 (Ct. App. 2000); *State v. Saxton*, 133 Idaho 546, 549-550 (Ct. App. 1999); *State v. Mitchell*, 124 Idaho 374, 375-376 (Ct. App. 1993). Given this, appellate courts in Idaho routinely decline to entertain claims of ineffective assistance of counsel when they are raised on direct appeal.

*Elison*, 135 Idaho at 551-552; *Santana*, 135 Idaho at 66-67; *Saxton*, 133 Idaho at 549-550; *Mitchell*, 124 Idaho at 376.

The requirement that a claim of ineffective assistance be raised through a petition for post-conviction relief, rather than on direct appeal, is all but inescapable for claims of ineffective assistance of counsel of the type addressed by *Padilla*, where the alleged deficiency relates directly to the private consultation occurring between an attorney and client regarding the decision whether to plead guilty. See *Mitchell*, 124 Idaho at 376 (recognizing that claims of ineffective assistance of counsel requiring development outside the trial record typically include issues as to “the adequacy of counsel’s communications with the defendant.”). Under Idaho’s unique post-conviction jurisprudence, such claims would necessarily need to be litigated through collateral attacks in post-conviction, rather than on direct review, because they hinge on evidentiary matters outside the record on direct appeal. Therefore, the standards for justiciability of such claims under Idaho law is the exact opposite as those present in federal habeas corpus – rather than requiring that such claims be raised in prior proceedings in order to properly exhaust state remedies, these issues of ineffective assistance of counsel cannot be raised in any proceeding other than a post-conviction petition under Idaho law.

Under requirements of exhaustion of remedies, review of any constitutional issue under federal habeas corpus presupposes that the defendant has already had a prior opportunity to litigate the claim at issue. Because collateral attacks in post-conviction are almost always a defendant’s first and sole state mechanism to raise claims of ineffective assistance of counsel of the type described in *Padilla*, Mr. Medina asserts

such claims sufficiently implicate the fundamental fairness of the proceedings so as to be deemed a watershed rule.

2. Idaho's Unique Jurisprudence With Regard To Our More Expansive State Statutory Right To Counsel Requires A Lesser Standard For Watershed Rules With Regard To Claims Of Ineffective Assistance Of Counsel

Under the Sixth Amendment of the United States Constitution, a defendant is only guaranteed the right to counsel at “critical stages” of the criminal proceedings. *See, e.g., Iowa v. Tovar*, 541 U.S. 77, 87 (2004). However, by statute, Idaho’s unique jurisprudence provides a right to counsel that is broader in scope than that provided solely under the federal constitution and, therefore, reflects a heightened concern for protection of the right to counsel under Idaho law than inheres under the federal constitution.

In addition to having an independent right to counsel under Article I, § 13 of the Idaho State Constitution, criminal defendants in Idaho have extensive rights to the assistance of counsel by virtue of statute. *See, e.g., I.C. § 19-852*. By statute in Idaho, a criminal defendant has the right to appointed counsel, “to the same extent as a person having his own counsel is so entitled,” and is further entitled to the assistance of counsel in post-conviction proceedings under most circumstances. *See I.C. §§ 19-852, 19-4904*. Idaho’s general statutory right to the appointment of counsel grants an indigent defendant the right to appointment of counsel for any proceeding in which retained counsel would be entitled to appear. *State v. Young*, 122 Idaho 278, 281-282 (1992). Moreover, this right exists, regardless of whether the right of appointed counsel to appear in a proceeding, “comes from constitution, statute, regulation or ordinance.” *Id.* at 282; *see also Smith v. State*, 146 Idaho 822, 833-843 (2009). In addition, Idaho provides for a more expansive right to counsel by granting the right to counsel in order

to pursue a discretionary petition for review before the Idaho Supreme Court – a right that was expressly rejected under the Sixth Amendment by the U.S. Supreme Court. Compare *Hernandez*, 127 Idaho 685, 687-688 (1995) to *Ross v. Moffitt*, 417 U.S. 600, 610-616 (1974).

Especially noteworthy is the fact that, by Idaho's unique jurisprudence and under our statutory laws, a defendant enjoys a statutory right to counsel in post-conviction proceedings. See, e.g., *Charboneau v. State*, 140 Idaho 789, 792-793 (2004). This is quite significant with regard to our state's heightened protection of the right to counsel, as the right to counsel in post-conviction actions is expressly **not** recognized under the Sixth Amendment to the U.S. Constitution. See *Pennsylvania v. Finley*, 481 U.S. 551, 555-556 (1987).

In fact, the Court in *Finley* expressly recognized that the standards for the right to counsel under the Sixth Amendment are more restrictive than the very standard that is in place by statute in Idaho. In *Finley*, the Court held that the federal constitution does not require the appointment of counsel for an indigent defendant merely because an affluent defendant may retain one for the proceeding in question. *Id.* at 556.

“The duty of the State under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process.” *Id.*

Thus, the federal standard for the right to counsel is expressly more limited than that afforded to defendants by statute in Idaho – while the Sixth Amendment contains no guarantee that an indigent defendant has the same right to the representation of

counsel as the affluent one, Idaho recognizes just such a right by operation of I.C. § 19-852. *See also Young*, 122 Idaho at 281-282.

Moreover, once a statutory right to counsel has been conferred under Idaho law, this right carries with it all the guarantees of effective assistance of counsel as does the federal right to counsel at a critical stage of the proceedings. *See Hernandez v. State*, 127 Idaho at 687. As was noted by the Court in *Hernandez*, the “statutory right to counsel would be a hollow right if it did not guarantee the defendant the right to effective assistance of counsel.” *Id.* Therefore, this Court treats the statutory grant of the right to counsel under Idaho law as inherently conferring the right to the effective assistance of counsel. *Id.*

Because Idaho provides for much broader protection of the right to counsel than that recognized under the federal constitution, Mr. Medina asserts that this Court should account for this heightened protection when reviewing retroactive application of new rules of law that involve the right to competent representation of counsel. This is particularly the case where the rule in question involves issues of critical importance to the competent representation of criminal defendants, as is the case with *Padilla*.

The Court in *Rhoades* has indicated that the standard for watershed rules in Idaho encompasses review for whether the rule implicates the fundamental fairness of the proceedings, and that Idaho courts independently review whether a rule would meet this standard in light of Idaho’s jurisprudence and our state constitutional standards. *See Rhoades*, 149 Idaho at 134. In light of Idaho’s more expansive right to counsel, both under our constitution and under our statutory laws, Mr. Medina asserts that the standards articulated for competent representation of counsel under *Padilla* should be deemed a watershed rule by this Court.

D. The Statute Of Limitations To File A Post-Conviction Petition Should Be Tolloed In Mr. Medina's Case Because He Was Denied Due Process Of Law

Mr. Medina seeks equitable relief and requests that this Court hold that the statute of limitations be tolled for him to file his petition for post-conviction relief. Mr. Medina asserts that due to the change in the law and his trial attorney's actions, he was denied due process of law under both the federal and state constitutions.

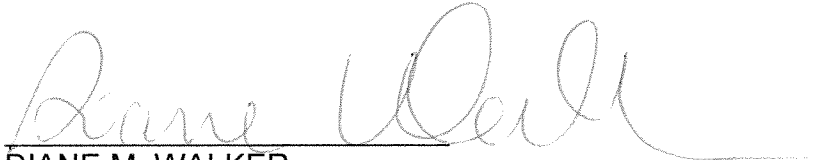
Pursuant to I.C. § 19-4902, an application for post-conviction relief must be filed within one year from the expiration of the time for appeal, or from the determination of an appeal or from the determination of proceedings following an appeal, whichever is later. I.C. § 19-4902; *Evensiosky v. State*, 136 Idaho 189, 191 (2001). However, under some circumstances the statutory time limitation for filing a petition for post-conviction relief may be tolled. Idaho has recognized equitable tolling relating to post-conviction petitions in two circumstances: "(1) where the petitioner was incarcerated in an out-of-state facility on an in-state conviction without legal representation or access to Idaho legal materials; (2) and where mental disease and/or psychotropic medication renders a petitioner incompetent and prevents the petitioner from earlier pursuing challenges to his conviction." *Sayas v. State*, 139 Idaho 957, 960 (Ct. App. 2003). The Court of Appeals recently reaffirmed the existence of equitable tolling in cases which "raise important due process issues." *Schultz v. State*, 151 Idaho 383, 386 (Ct. App. 2011).

Mr. Medina asserts that the constitutional rights implicated by *Padilla* "raise important due process issues." *Id.* Due to a change in the law effectuated by *Padilla*, Mr. Medina asserts that he was denied due process of law. Mr. Medina requests that this Court find that his case raises important due process issues and grant him equitable relief by tolling the statute of limitations and deem that his petition was timely filed.

CONCLUSION

Mr. Medina respectfully requests that this Court vacate the district court's order dismissing his petition for post-conviction relief and remand this case for further proceedings.

DATED this 21<sup>st</sup> day of May, 2013.

A handwritten signature in cursive script, appearing to read "Diane Walker", written in black ink over a horizontal line.

DIANE M. WALKER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21<sup>st</sup> day of May, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ERNESTO GUTIERREZ-MEDINA  
528 ANNEX RD  
ONTARIO OR 97914

SUSAN E WIEBE  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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E-MAILED BRIEF

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Hand delivered to Attorney General's mailbox at Supreme Court.

  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

DMW/eas